

# Collection of International Trade Tax through Electronics (E-Commerce) According to Indonesian Law

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**ABSTRACT:** Determining taxes for E-commerce is something that is really needed at this time because the increasing development of E-commerce has changed conventional trading patterns to trading via the internet. The problem is how to regulate taxes for E-commerce between countries based on Indonesian law. The research method used is normative-descriptive with a qualitative research type. The results of the research explain that there are several statutory regulations as the legal basis that regulate taxation, including the tax law which regulates tax collection through the E-commerce system that crosses national borders. The problem of e-commerce which can be categorized as goods trade transactions or other transactions which are the same as conventional trade, the only difference is the method or tools used when transacting via e-commerce, so that the tax applied between the two must be the same in order to realize equality in imposing taxes intrade sector.

**KEYWORDS:** Law; E-Commerce; Tax; Trade.

## I. INTRODUCTION

Current technological developments have had a progressive impact on countries in the world to cooperate with each other in developing and advancing their countries. Increasingly sophisticated technological advances are a basic need for every human being, one of which has changed the behavioral patterns of business actors in transactions/commerce. This technological sophistication is increasingly experiencing complexity, so it is necessary to provide legal certainty to regulate trade transactions via e-commerce. This is because technological advances have opened a gap for the international community in helping and resolving complaints from society, especially Indonesia, so that with these technological advances there are laws or statutory regulations containing legal norms that are formed

to regulate technological progress to provide legal certainty as a guarantee for the public in these electronic transactions.

Advances in technology, especially the internet, have also changed business practices via the internet, which is now often called e-commerce. The complexity of trade problems has its own characteristics which in the world of trade have different characteristics, because between e-merchants (parties who offer goods or services on the internet) and e-customers (parties who use or buy goods or services via the internet). E-commerce generally takes place in a paperless transaction (transactions without using paper), so that transactions do not use paper documents but instead use electronic documents (Rahmatullah, 2018).

Indonesia as a country that has experienced progress in the business sector, the use of the internet in buying and selling transactions has changed trading practices but has also changed the country's current financial ecosystem. If we look at its development, technological progress has provided satisfaction and convenience for its users, for example Amazon and London-based ASOS have considered Southeast Asia such as Singapore, Thailand and Indonesia as the fastest growing market in Asia. Therefore, this is vital for business progress so that it can adapt to consumer demand and make shopping activities better (Bruno Sidler, 2018). It is necessary to make taxes mandatory for business actors in e-commerce transactions so that they can produce results that can help the country's economy, due to the large number of transactions carried out using this technology and the large number of e-commerce that is included in the scope of Indonesian customs tax which must be taxed.

The Indonesian people have found it easy and comfortable for consumers to carry out buying and selling transactions via e-commerce (electronic commerce), making conventional trade transactions

drop significantly. This certainly provides benefits for the state, namely when the state can make e-commerce an object and subject of taxation itself. The Directorate General of Taxation has mapped four e-commerce transaction models, namely Online Marketplace, Classified Ads, Daily Deals and Online Retail (Budi, 2014). In these four e-commerce transaction models, there is a payment of compensation or income due to buying and selling goods/or services which is a tax object for Income Tax (PPH) and Value Added Tax (VAT) which will be subject to tax according to the applicable tax regulations. Because this technological progress cannot be avoided, good regulations so that this technological progress can help the country, appropriate tax regulations are needed for users of this technology.

Determining taxes for e-commerce is something that is really needed at this time because the increasing development of e-commerce has changed conventional trading patterns to trading via the internet or social media. State income in the form of taxes, either income tax or state income tax, can be beneficial for improving the country's economy. Taxes play a very important role as a source of state income, and can be used as a tool to regulate economic activities. Taxes function as a tool or instrument used to optimally enter funds into the state treasury. This tax function is more directed as an instrument for attracting funds from the public to be put into the state treasury. Funds originating from taxes are used for government administration and activities (Chidir, 2007). If taxation for e-commerce is implemented, it can increase tax revenues for the country, so that taxation for e-commerce between countries is necessary, because in principle business or trade activities carried out through e-commerce are trade activities that must be taxed the same as conventional trade. others (Sakti, 2014).

According to Rochmat Soemiro, the imposition of taxes on every taxpayer is a form of public savings given to the state to be returned to the community in the form of infrastructure, government services and so on (Soemiro, 1988). This, of course, the imposition of taxes in the form of e-commerce transactions will provide the greatest benefit to the wider community because the taxes given will be returned by the state in the form of infrastructure that can provide welfare for the community. State income in the form of taxes also has a function not only for government income but also in regulating the country's economy (Regular End) (S.R., 2007). The economic regulations currently needed by the state will be resolved if we can make business actors who carry

out transactions using e-commerce become tax subjects both domestically and abroad which can generate massive state income through tax obligations themselves. If analyzed in general, a country has the right to collect taxes on every individual or business entity based on two things, namely personal attachment or the relationship between a country and the tax subject and territorial attachment or the relationship between a country and its territory with that country (Schon, 2010). Implicitly, the state also has the right to traders in e-commerce (e-merchants) to levy taxes on them and on e-commerce companies whose economic activities are in Indonesia.

According to Article 26 of Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax has provided an explanation regarding Foreign Tax Subjects that can be taxed. Furthermore, there is Presidential Regulation (Perpres) Number 74 of 2017 concerning the Road Map for the Electronic-Based National Trading System (SPNBE). The consideration of the Presidential Regulation is that the electronics-based economy has great economic potential and is one of the backbones of the national economy. This is related to the type of tax for e-commerce, that actually there is no new type of tax. In this case, the application of e-commerce tax will only implement the provisions in existing regulations, namely Law no. 28 of 2007 General Provisions and Tax Procedures (KUP), Income Tax Law (PPH), Value Added Tax (VAT) Law, and Government Regulation (PP) Number 46 of 2013 concerning Income Tax on Income from Businesses Received or Obtained by taxpayers who have a certain gross circulation. According to the Attachment to the Circular Letter of the Director General of Taxes Number SE-62/P1/2013 concerning Confirmation of Tax Provisions for E-Commerce Transactions, it details two types of taxes that can be imposed on e-commerce transaction actors, namely income tax and value added tax. The determination of tax for e-commerce has also found controversy over whether Law Number 36 of 2008 concerning the Fourth Amendment to Law Number 7 of 1983 concerning Income Tax is the legal basis. As a country that is still studying taxation for e-commerce, the Indonesian government still has a lot to learn from countries that have been successful in determining taxes up to the stage of tax collection for e-commerce between countries (Pangesti, 2017).

Based on this idea, the author analyzes tax arrangements for e-commerce between countries, and how the regulations for income tax levies for inter-country e-commerce actors are based on

Indonesian law, as well as what factors influence tax levies for inter-country e-commerce actors in Indonesia.

## **II. RESEARCH METHODS**

The research method used is normative-descriptive with a qualitative research type. The research objects studied in the literature are books, statutory regulations, documents, both printed and electronic documents as well as various previous research results that discuss issues related to taxation law, namely Income Tax (PPH) and State Income Tax. The approach used includes two types of approaches, namely; first, the statutory approach, considering that the researcher is trying to analyze several statutory regulations as the focus of the research. Second, the conceptual approach, researchers try to find appropriate concepts in regulations related to Tax Law in Indonesia. The data is analyzed juridically and then compared with data in the form of the content of Income Tax legal regulations. The data is further processed using descriptive analysis methods, namely by understanding and constructing new thoughts to produce new, more concrete ideas.

## **III. RESULTS AND DISCUSSION**

### **1. Understand E-Commerce**

E-commerce is a process of business-to-business trade relations, and to facilitate purchases or sales between companies, where payments sometimes use Online Processing Credit Cards, Money Transfer, or Cash on Delivery, if the consumer's address is in the same city as the seller. Some people think that E-commerce is online shopping, shopping, or buying something on the internet. Online transactions are only a small part of the purpose of e-commerce. This is because most of the functions of e-commerce itself are a means of doing business. Electronic Commerce (E-Commerce) is the process of buying, selling or exchanging products, services and information via computer networks. E-commerce is part of e-business, where the scope of e-business is broader, not just commerce but also includes collaborating with business partners, customer service, job vacancies and so on. Apart from www network technology, e-commerce also requires database technology, e-mail or electronic mail (e-mail), and other forms of non-computer technology such as goods delivery systems and payment tools for e-commerce (Karyatiningsih, 2011).

According to experts who interpret e-commerce as the process of buying and selling or exchanging products, services or information via computer (Turban & Volonino, 2010), according to

Laudon, the definition of e-commerce is business transactions carried out via the internet or web or trade transactions which is carried out through digital tools between organizations and organizations or with individuals or between individuals themselves (Laudon, 2010). Both definitions explain that e-commerce is an activity of buying and selling or exchanging goods that is carried out indirectly or without face to face, but is used using the internet or other digital tools. According to Kotler & Armstrong (2012) e-commerce is an online channel that can be reached by someone via electronic devices such as computers or cellphones, which is used by sellers in conducting their business and used by consumers to obtain information by using internet services, the process of which begins by providing information services for consumers in making choices. Likewise, according to Jony Wong, e-commerce is the process of buying and selling and marketing goods and services through electronic systems, such as radio, television and computer networks or the internet (Wong, 2010). From these two definitions, it can be concluded that e-commerce is a site that someone uses to carry out buying and selling transactions in cyberspace, without meeting in person.

E-commerce has different characteristics from ordinary trade, the characteristics in question are (1) Unlimited Transactions, meaning that trade carried out through e-commerce is not hindered by the company and can cover all aspects of the company from small businesses to even large businesses, even Trade via e-commerce is not hindered by national borders, everyone is free to shop just using the internet outside Indonesia (Renung, 2012); (2) Anonymous transactions, the meaning of anonymous transactions are transactions carried out without a direct or face-to-face meeting between the seller and the buyer, the buyer does not even need a real identity as long as the payment has been authorized (Renung, 2012); (3) Digital and Non-Digital Products, by using e-commerce the products that will be offered will vary, from primary needs to secondary needs (Renung, 2012); (4) Intangible Goods Products, all forms of goods such as data, software or other ideas are also sold online or on the internet network (Renung, 2012).

Furthermore, there are four models for e-commerce transactions, namely; (1) Online Marketplace is the activity of providing a place for business activities in the form of an internet shop as an Online Marketplace Merchant to sell goods and/or services. In this transaction model, there is a reward, in the form of a rent fee or registration fee,

for services in providing place and/or time. Examples of this transaction are Tokopedia, Bukalapak, Shope, and others (Budi, 2014); (2) E-commerce classified ads is the activity of providing a place and/or time to display advertisements for goods and/or services carried out by advertisers through sites provided by Classified Ads Organizers, examples of this transaction are Olx, Kaskus and others (Budi, 2014); (3) Daily Deals are the activity of selling goods and/or services carried out directly by the Daily Deals organizer to buyers on the Daily Deals site using buyer vouchers, for example Allians, Adira, AlfaOnline and others (Budi, 2014); (4) Online Retail is the activity of selling goods and/or services carried out directly by the Online Retail organizer to buyers on the Online Retail site, for example, lakupon and dealgoing (Budi, 2014).

## 2. E-commerce in Legal Perspective in Indonesia

### a. E-commerce in Civil Law Perspective

The issue of trade through e-commerce in Indonesia will always be related to civil law, which is the rules regarding trade agreements, so that one of the factors that influences the development of contract law in Indonesia is the field of trade. Civil law in Indonesia is regulated in the Civil Code (BeurgerleijkWetboek). In relation to trade, the Civil Code recognizes the principles of contract law. There are three main principles in making and implementing an agreement. These three principles are: 1) The principle of freedom of contract or an open system; 2) The principle of consensualism; c) The principle of good faith. In the principle of freedom of contract, this means that the parties are free to make an agreement and regulate the contents of the agreement themselves, as long as they fulfill the following conditions: a) meet the requirements as an agreement; b) not prohibited by law; c) in accordance with applicable customs; d) as long as the agreement is carried out in good faith. This principle of freedom of contract is a reflection of the open system of contract law (Fuady, 2001).

The principle of freedom of contract is what allows parties to regulate and make their own contracts. In relation to e-commerce transactions, the actors, both sellers and buyers, will make an agreement without a direct or face-to-face meeting, which is then stated in an electronic contract that is binding for both parties, so that automatically the form of the contract is valid and can be enforced (Anjan & Suntoso, 2018). The legal basis for contracts or e-commerce trade transaction agreements in Indonesia is regulated in Article

1320 of the Civil Code which regulates the conditions for the validity of an agreement, namely: a) agreement between those who bind themselves/there is an agreement between the parties; b) the ability to create an agreement; c) a certain thing/the existence of a certain object; d) a lawful cause (Yustisia, 2015). The first two conditions are subjective conditions because they are conditions regarding the parties entering into the agreement, while the last two conditions are objective conditions because they are conditions regarding the object of the agreement. If the subjective conditions are not met, the agreement can be canceled at the request of the party entitled to a cancellation. However, if the parties have no objections, then the agreement is considered valid. If the objective conditions are not met, the agreement can be null and void, which means that from the start it is considered that the agreement was never entered into. Agreements made by both parties remain valid as long as both parties are aware of the legal actions being carried out.

In relation to e-commerce transactions, as long as the parties transact with each other in accordance with Article 1320 of the Civil Code regarding whether an agreement is valid or not, then the parties can also be said to have entered into a valid agreement and can be categorized as trade or transaction. buy and sell. The difference is that the transaction is carried out via the internet or online, so that e-commerce transactions can also be called a trading effort carried out via the internet.

### b. E-commerce According to Law no.11 of 2008 as amended by Law Number 19 of 2016 concerning Information and Electronic Transactions

Currently, information technology related to cyberspace has been used in many sectors of life, starting from trade/business, education (electronic education), health (telemedicine), telework, transportation, industry, tourism, the environment to the entertainment sector, even now it is also emerging for the government sector (e-government) (Wiradipradja & Budhijanto, 2002). In order to fulfill the globalization of the era to fulfill the legality of trading activities via the internet, Law 11 of 2008 was formed which has been amended by Law Number 19 of 2016 concerning Information and Electronic Transactions, which is the main legal basis for e-commerce in Indonesia. This law applies to every person who carries out trade, whether within the territory of Indonesia or outside Indonesia, who carries out transactions with Indonesia.

Law No. 11 of 2008 concerning Information and Electronic Transactions provides two important things, namely, firstly, recognition of electronic transactions and electronic documents within the framework of the law of engagement and law of evidence, so that the legal certainty of electronic transactions can be guaranteed, and secondly, it classifies the actions involved, including qualifications for legal violations related to misuse of information technology accompanied by criminal sanctions. With the recognition of electronic transactions and electronic documents, at least e-commerce activities have a legal basis. The law of evidence contained in Law No. 11 of 2008 which is *lex specialis* aims to regulate electronic transactions in criminal, civil and state administration aspects and several other aspects relating to legal actions in the cyber domain (Kitchin, 1998).

**c. E-commerce According to Law Number 7 of 2014 concerning Trade**

Article 1 paragraph 1 of Law Number 7 of 2014 concerning Trade explains that: "Trade is the order of activities related to transactions of goods and/or services within the country and beyond national borders with the aim of transferring rights to goods and/or services to obtain rewards or compensation". The law explains that activities related to transactions of goods or services that receive rewards or compensation, whether carried out domestically or abroad, can both be categorized as forms of trade. The existence of e-commerce is a new order of transactions that can be carried out across countries which can also be subject to tax because it is in accordance with the category of legal trade and has clear legality in Law Number 7 of 2014 concerning Trade. Law Number 7 of 2014 concerning Trade is the legal basis that provides legal certainty for both business actors and buyers, that transactions carried out through e-commerce carried out between countries can be qualified as a form of legal trade and should be subject to the existing legal basis implemented in Indonesia.

**d. E-commerce According to the Circular Letter of the Director General of Taxes Number SE/62/PJ/2013 concerning Confirmation of Tax Provisions for E-commerce Transactions**

Based on Circular Letter of the Director General of Taxes Number SE/62/P1/2013 concerning Confirmation of Tax Provisions for e-commerce Transactions as a policy to optimize state revenues for Income Tax (PPH) and Value Added Tax (VAT) for e-commerce

transactions (Sari, 2018). The Economic Policy Package implemented by the government, including the e-commerce tax policy, has divided e-commerce transactions into 4 e-commerce transaction models, namely Online Marketplace, Classified Ads, Daily Deals, and Online Retail (Sari, 2018). The regulation of taxation in e-commerce transactions has indicated that buying and selling activities are carried out on the network or internet. This has the same position in tax law as one of the subjects of taxation itself, namely, income tax on economic activities carried out by business actors in the marketplace.

The tax relationship between E-commerce business actors between countries can also be seen in the Income Tax Law, especially Article 2 Paragraph (4) which provides legality for foreign tax subjects to participate in paying taxes on results obtained through buying and selling activities carried out in Indonesia. This is in accordance with the implementation of the tax collection principles given by the state to the government to collect taxes. The number of buyers and online buying and selling transactions continues to increase from year to year, indicating that online business will continue to grow, and it is estimated that this positive trend will continue for at least the next five years. Data and facts about the increasing number of online transactions have made many business people start to look at and even switch to 14 online businesses. From data released by the Ministry of Communication and Information, Indonesia has now become one of the online business or e-commerce giants in the Asia Pacific region.

Withdrawing this tax is a form of equal taxation which must be applied to everyone who has a source of income either from their own country or from another country. This is as regulated in the letter from the Director General of Taxes number S-702/PJ.332/2006 concerning Confirmation of Tax Provisions for E-commerce Transactions. The contents of the letter indicate that there is no difference in tax treatment between e-commerce transactions and other trade transactions in goods and/or services. In accordance with these provisions, there is no reason whatsoever for e-commerce players to avoid their tax obligations (Aprilia, et al., 2014).

**3. Permanent Form of Business as a Requirement for Tax Collection for Inter-State E-Commerce Actors**

There are several types and forms of tax collection that can be collected by the state simultaneously, namely through the source principle and the domicile principle. This is because

each country applies the same principles of tax law at the same time, giving rise to clashes between tax laws in various countries. If we look at tax law in Indonesia, the existence of similarities in the principles of tax law in various countries creates heavy pressure, which can influence investors' desire to expand their business to various countries because it results in double taxation. Economically, tax is a sacrifice of resources that must be borne by entrepreneurs and society. The existence of double taxation as a result of tax collection by two tax collection provisions (from two countries) places a burden on entrepreneurs as taxpayers. Meanwhile, the movement of business to foreign countries has its own risks compared to business carried out domestically, double tax collection has increased these risks. Therefore, it is an international need for countries to strive to ensure that their tax policies are neutral towards international competition.

Thus, the existence of a tax treaty or Double Taxation Avoidance Agreement can facilitate and encourage foreign investment in Indonesia by eliminating double taxation and dividing tax collection rights for certain types of income between two countries. However, the tax treaty also provides an opportunity for investors to use holding companies (holding companies commonly used by multinational companies in investing to hold shares in subsidiaries) in tax treaty partner countries to invest in Indonesia and gain tax benefits. This is a step to not impose a heavy tax burden on taxpayers and avoid tax evasion and evasion carried out by entrepreneurs who feel burdened. Along with developments in the field of international transactions which include trade, services and capital, taxes have become a new problem to overcome the lack of regulation regarding which countries have the right to provide taxes on income arising from international transactions, transfer pricing, smuggling and tax evasion, etc. To prevent tax problems arising from international transactions, cooperation between countries is needed and one form of such cooperation is a bilateral agreement in the field of taxation, known as the Double Taxation Avoidance Agreement (Tax Treaty) (Utama, 2021). Tax Treaty which contains provisions governing the distribution of tax collection rights from each country on income arising from international transactions so that double taxation can be avoided. Apart from that, tax treaties can also regulate the exchange of information needed to prevent tax smuggling through transfer pricing practices.

In connection with the Tax Treaty, a new tax subject model emerged which is often known as

Permanent Establishment. Permanent Establishment has now become an absolute definition in international tax provisions. The existence of a Permanent Establishment affects a country's right to impose taxes on objects that have been adjusted. In practice, in Indonesia it turns out that legal consistency regarding the status of permanent establishments which are treated as foreign tax subjects is still inadequate. Electronic commerce (e-commerce), which is a form of technological progress, will certainly affect the existing trading system. This is, even though the emergence of e-commerce is still new, the potential promised in e-commerce trade is quite promising. A growing problem with e-commerce transactions is tax administration. Therefore, anticipating how to tax (tax treatment) income from e-commerce transactions that do not recognize geographical boundaries requires tax rules or provisions. Although this is still not sufficient to anticipate income from e-commerce transactions.

The difficulty in implementing income tax and state income tax for businesses with this information system is because the Directorate General of Taxes does not have access to transaction data. This difficulty increases even more when it is related to software transactions which make it easy for buyers to download software directly from the Internet and determining whether a web server is a permanent form of business or not also creates problems considering that the boundaries that occur are not yet clear. However, if the web server can only be used to display advertisements or other information relating to the products being traded then it will not create a permanent form of business like the Clasfi Ads e-commerce model.

This is if the web server can carry out the function of receiving orders and payments as well as sending digital products or services, including if consumers buy and simultaneously download software, then the web server is a permanent business entity. Furthermore, ongoing analysis of e-commerce issues involving a number of related parties is carried out, so that the implementation of tax regulations runs effectively. The regulations that will be established later should be an international agreement. This is because the imposition of taxes on e-commerce business actors can be carried out across countries, so for the sake of mutual comfort between countries, international regulations are needed that can benefit all parties. There are five principles of e-commerce taxation that can be used as guidelines in regulating e-commerce transactions quoted from the OECD in a report prepared by the Committee of Fiscal Affairs, including: (1)

neutrality and tax provisions must be neutral for all forms of trade, both electronic and traditional; (2) efficiency, namely costs such as compliance costs for taxpayers and administration costs for the Directorate General of Taxes must be truly minimized; (3) certainty and simplicity, namely tax regulations must be clear and easy to understand so that taxpayers know the imposition of tax when transactions are carried out; (4) effectiveness and fairness, namely tax calculations must be absolutely correct at the right time; (5) flexible, namely the tax system must be flexible and dynamic to ensure that the system can keep up with developments in technology and trade (Adam & Astin, 2019).

This is as stipulated regarding the conditions that must be met by OECD countries that agree to collect income tax on e-commerce transactions that have a Permanent Establishment using the source principle, if they do not have a Permanent Establishment then use the domicile principle. This agreement means that the country which is the source of income for business activities carried out by inter-country e-commerce business actors cannot be taxed because the temporary agreement does not properly regulate the existence and urgency of business actors' activities carried out cross-border. For comparison, in 2015, the European Union introduced a special scheme called Mini One Stop Shop (MOSS). MOSS functions to make it easier for companies to manage tax collections from consumers. MOSS is an online service that provides platform services for companies to comply with tax regulations, both value added and income tax in the country where it is traded, meaning in the source or consumer country (MOSS, 2019).

The European Union created two schemes, first, the value added tax regulation which stipulates that new taxes can be imposed if the transaction value meets a predetermined threshold in the country where the consumer resides. This trade is carried out through trading with a business to customer system which trades tangible goods. Likewise, if the company is not located in the European Union, if the value of the goods meets the threshold then the consumer country has the right to collect value added tax in accordance with applicable regulations. Second, companies that are integrated with the European Union's value added tax system are required to lend funds of 8 euros to each country where they sell goods. This second scheme is applied to intangible goods such as games, music service providers, films and software. When a company originates or does not originate from a country and is or is not located in

that country, the applicable law is the value added tax law in the consumer's country (European Commission, 2013).

#### **IV. CONCLUSION**

There are several laws and regulations as the legal basis that regulate taxation, including the tax law which regulates tax collection through e-commerce systems that cross national borders. One of them is Law Number 36 of 2008 concerning Income Tax which is applied to income received by foreign taxpayers from Indonesia through the e-commerce system with business actors who do not have a permanent establishment in Indonesia. This law is the legality of imposing taxes on e-commerce actors between countries. The problem of e-commerce can be categorized as a trade transaction in goods or other juices which is the same as conventional trade, the only difference is the method or tools used when transacting via e-commerce. Taxes between the two must be equalized in order to realize equality in tax treatment in the trade sector. The factors that hinder tax collection for e-commerce are the high level of anonymity, the ease of doing e-commerce business, so that transactions can be carried out cross-border or across countries. Data in electronic transactions cannot always be trusted and there is still no harmonization of regulations and good cooperation between state institutions and business entities that have e-commerce platforms themselves.

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